

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAVID E. MACK,
Plaintiff,

vs.

I.C. SYSTEM, INC.,
Defendant.

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CAUSE NO. 4:13-CV-615

**DEFENDANT I.C. SYSTEM, INC.'S RESPONSE TO PLAINTIFF'S REQUEST FOR
THE COURT TO APPOINT MEDIATOR**

COMES NOW, Defendant I.C. System, Inc. ("I.C. System" or "Defendant" hereafter), by and through the undersigned counsel, files its Response to Plaintiff's Request for the court to Appoint Mediator and to respectfully show unto the Court as follows:

I.

1. On July 17, 2014, Plaintiff filed his Request for the Court to Appoint Mediator in this case. Doc. 19. Plaintiff states that he has attempted on a number of occasions to elicit Counsel for Defendant's cooperation..." and "Defendant's Counsel has steadfastly refused to respond to Plaintiff's multiple attempts to contact him to choose a mediator and has in ALL respects flatly refused to respond to the Plaintiff." *Id.* at 1.

2. After receiving Plaintiff's Request, Both Robbie Malone and Xerxes Martin checked their e-mails and found no communications from Plaintiff in recent time. Thereafter, Mr. Martin checked the e-mail account of Drew Jones, an attorney of record for I.C. System, who left the firm of Robbie Malone, PLLC June 30, 2014. In searching Mr. Jones' e-mail account, I.C. System's counsel discovered the referred to communication attempts by Plaintiff described in his Request. (Attached hereto as Exhibit A). Plaintiff sent three (3) emails within a period of three (3) business days, and then without any further communication attempts and by any other means

such as a telephone call, two (2) days later files his Request for the Court to Appoint Mediator. I.C. System's counsel has since contacted Plaintiff to direct all further communication to other counsel of record (attached hereto as Exhibit B) and has filed a withdrawal of appearance for Mr. Jones. Therefore, I.C. System requests this Court deny Plaintiff's request for the Court to take any necessary action "to persuade Counsel for the Defendant to follow Local Rule AT-3...."

II.

3. In response to Plaintiff's request for the Court to appoint a mediator, I.C. System's position is that appointing a mediator is not appropriate in this case unless it is a mediated settlement conference before a United States Magistrate Judge. The amount of potential damages in this particular case is relatively comparable to what the cost of using a mediator would be. This case is slightly different than majority of cases involving FDCPA claims because Plaintiff is *prose* and therefore what is usually the bulk of sought damages, attorneys' fees, is not available. Furthermore, appointing a mediator other than a Magistrate would be counterproductive with the amount in controversy for Plaintiff's allegations and only serve to drive up I.C. System's costs for defense. For these reasons, I.C. System requests this Court to allow the parties to conduct a mediated settlement conference before a United States Magistrate Judge or excuse the parties from mediation.

III.

WHEREFORE, PREMISES CONSIDERED, Defendant I.C. System, Inc. respectfully requests this Court deny Plaintiff's request for the Court to take action on Local Rule AT-3 and either order the parties to a mediated settlement conference before a United States Magistrate Judge or excuse the parties from mediation.

[FULL SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

ROBBIE MALONE, PLLC

/s/ Robbie Malone
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded **via CM/RRR** and **U.S. 1ST CLASS MAIL** on this 22nd day of July, 2014 to:

David Mack
7720 McCallum Blvd. #2099
Dallas, Texas 75252
(972) 735-9642

/s/Robbie Malone